In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-172

GROENDYKE TRANSPORT, INC., AND ANN MYERS BELL d/b/a BELL TRANSPORT CO., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the court of appeals (Pet. App. A39-A42) is reported at 493 F. 2d 17. The decision and order of the Board (Pet. App. A1-A38) are reported at 204 NLRB No. 27.

JURISDICTION

The judgment of the court of appeals (Pet. App. A43) was entered on May 20, 1974. The Company's petition for a rehearing (Pet. App. A44) was denied on June 19, 1974. The petition for a writ of certiorari was filed on August 23, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether substantial evidence supports the Board's finding that the company violated Section 8(a)(1) of the National Labor Relations Act by coercively interrogating employees, threatening them with less advantageous working conditions and discharge, and promising them benefits if they rejected the union.

2. Whether substantial evidence supports the Board's finding that the company violated Section 8(a)(3) and (1) of the Act by demoting one employee and discharging another employee because of their union activities.

3. Whether the Board properly found a bargaining order to be an appropriate remedy for the company's violations of the Act.

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at Pet. App. A45.

STATEMENT

A. The Board's Findings of Fact

1. The restraint and coercion

Groendyke Transport, Incorporated ("the Company") operates a trucking business at Longview, Texas (Pet. 3). In early March 1972,[1] employee Roy Alsip, in a series

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[1]All dates are in 1972.

of meetings with the Company's drivers, solicited signatures on Union[2] authorization cards. (Pet. App. A12; A. 19.)[3] By May, the majority of the employees had signed authorization cards (Pet. App. A33, n. 15; A. 178-181).

Upon learning of the Union activity in early April, Terminal Manager Gail Anderson called Alsip into his office and told Alsip that his Union activities would "cause [Alsip] to lose his job" (Pet. App. A13; A. 69). After assigning Alsip to drive an older truck with frequent mechanical problems, Anderson repeatedly reminded Alsip that, "if [he] hadn't tried to bring the Union in [he] would still be driving a new truck" (Pet. App. A13; A.73). From early April until the Board-conducted representation election on July 15,[4] Anderson told other employees whom he "caught" talking to Alsip that they would get in "trouble, too," if they continued to fraternize with him (Pet. App. A14; A. 73).

In early April, shortly after the second organizational meeting, Anderson called employee Maass into his office and asked whether he attended, and who else attended, the Union meetings (Pet. App. A14; A. 91-92). Anderson told Maass that he could "get in trouble" over the Union (Pet. App. A15; A. 193). On a subsequent occasion,

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[2]Southern Conference of Teamsters, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereafter "The Union").

[3]"A." refers to the appendix to the briefs in the court below.

[4]The election, which the Union lost, was set aside because of the Company's unfair labor practices (Pet. App. A11, A30-A31).

Anderson questioned Maass about his past union activities saying, "Haven't you had trouble on a job before because of the Union * * * Did you get run off?" When Maass said that he had left, Anderson said, "Well, you could do the same here" (Pet. App. A15; A. 98). On the day of the representation election, Anderson remarked to Maass, "We won't get those new trucks if the Union is voted in" (Pet. App. A15; A.95).

In late June or early July, when employee Statler went into Anderson's office to obtain a cash advance, Anderson told Statler that "if the Union came in there wasn't going to be any more of these cash advances" (Pet. App. A16; A. 113). Anderson went on to say that there would be "quite a few people run off because of this Union" (Pet. App. A16; A. 113-114). On the day before the Board election, Anderson told Statler that "he had Mr. Alsip and Mr. Silvertooth running together, * * * that they could run up and down the road together and talk about the Union and * * * that they would be together when they left there" (Pet. App. A16-A17; A. 116).

Just a few minutes after the polls closed on the day of the election, July 15, Statler was talking to Dispatcher Craig when Anderson walked up to them. Statler remarked, "Sure is a lot of confusion around here today."Anderson replied, "Yeah, but it is not going to be any longer. * * * I've got those kind of suckers where I want them now." (Pet. App. A17; A. 117.) Craig and Anderson then began discussing which tractors had hot water hookups. Statler noted that employee Joyner, a Union supporter, was operating one such tractor. Anderson said, "Yeah, he is driving it for the short time he is going to be here, too" (Pet. App. A17; A. 117).

2. The discrimination against employees Silvertooth and Alsip

On May 26, employees Silvertooth, Alsip, and Storch attended the Board's representation hearing in Fort Worth, Texas, where they were seen by Company representatives Hamilton and Anderson. When Silvertooth came to work on the Monday following the hearing, he found that his truck had been assigned to another driver and that he had been "bumped back to second driver." (Pet. App. A21; A. 102.)

On August 23, five weeks after the election, the Company dispatched Alsip to "run" with driver Larry Nolen. Alsip said he would not run with Nolen because he was "too reckless." Alsip suggested that the load be given to him or to Nolen, alone. The dispatcher replied: "That's fine. * * * [We] will just give it to Nolen" (Pet. App. A25; A. 75-76).

Terminal Manager Anderson returned to the office on August 29. Upon learning what had occurred, Anderson accused Alsip of refusing to accept a dispatch and told him to take "two weeks to rest" (Pet. App. A25; A. 76-77). On September 8, the Company officially suspended Alsip pending an investigation into the matter. On September 23, without calling Alsip back to work, the Company discharged him for refusing a dispatch and failing to report to work since August 24 (Pet. App. A25; A. 77-78).

B. The Decisions Below

On the foregoing facts, the Board found that the Company violated Section 8(a)(1) of the Act by coercively interrogating employees, threatening them with less advantageous working conditions and discharge because of their activities on behalf of the Union, and promising them benefits if they rejected the Union (Pet. App. A30). The Board

further found that the Company violated Section 8(a)(3) and (1) of the Act by demoting employee Silvertooth and discharging employee Alsip because of their union activities (Pet. App. A30).

The Board ordered the Company to cease and desist from these unfair labor practices, and to reinstate, with backpay, employees Silvertooth and Alsip. The Board, finding that the Union had obtained valid authorization cards from a majority of the employees in the unit prior to the election and that the Company's extensive unfair labor practices had undermined the Union's majority and destroyed the conditions for holding a free and fair election, further ordered the Company to bargain with the Union (Pet. App. A31-A36).

The court of appeals sustained the Board's findings and conclusions, and enforced its order (Pet. App. A39-A42).

ARGUMENT

The sole issues presented by the petitioners are whether substantial evidence supports the Board's unfair labor practice findings and whether the Board, as a remedy for those unfair labor practices, properly ordered the Company to bargain with the Union. These issues, which turn on an evaluation of the facts of this particular case, do not warrant further review. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 490-491; *National Labor Relations Board* v. *Gissel Packing Co.*, 395 U.S. 575, 614-615. In any event, as we have shown, the record supports the Board's findings and the remedy which it ordered.

The decision below is not in conflict with any of the cases on which petitioners rely. In *Bourne* v. *National Labor Relations Board*, 332 F. 2d 47 (C.A. 2),

the court held that "interrogation, not itself threatening, is not * * * an unfair labor practice unless it meets certain fairly severe standards." *Id.* at 48. Here, by contrast, the court of appeals upheld the Board's finding that the Company's interrogation "was in fact threatening" (Pet. App. A15). In *G.P.D. Inc.* v. *National Labor Relations Board*, 406 F. 2d 26 (C.A. 6), the court held that the employer's "statement was no more than his prediction of a probable consequence over which he had no control * * *." *Id.* at 31. Here, however, Anderson predicted undesirable consequences within the Company's power to control. Finally, in *Arbie Mineral Feed Co.* v. *National Labor Relations Board*, 438 F. 2d 940 (C.A. 8), the court denied enforcement of the bargaining order "since the evidence affirmatively showed that the company's unfair labor practices did not pollute the election atmosphere" (*id.* at 945) in that majority support for the union arose after the commission of unlawful conduct. Here, however, the evidence shows, as the Board found, that the unfair labor practices in fact undermined the Union's majority.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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